

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

<b>Minutes of:</b>	<b>Regular Meeting of Milpitas City Council</b>
<b>Date:</b>	<b>Tuesday, February 4, 2014</b>
<b>Time:</b>	<b>6:00 PM</b>
<b>Location:</b>	<b>Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas</b>

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Mary Lavelle noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, and Councilmember Montano

**ABSENT:** Councilmembers Giordano and Gomez were absent at roll call. Councilmember Giordano arrived at 6:04 PM and Councilmember Gomez arrived at 6:17 PM.

**CLOSED SESSION**

City Council convened in Closed Session to discuss litigation and labor negotiations.

City Council then convened in Open Session at 7:06 PM. Mr. Gomez was not present on the dais.

**ANNOUNCEMENT**

No announcement out of Closed Session.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Rev. Clement Wong of Silicon Valley Alliance Church in Milpitas offered a prayer, upon invitation of Mayor Esteves.

**MINUTES**

**Motion:** to approve meeting minutes of January 21, 2014 City Council meeting

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of:	AYES: 4
	NOES: 0
	ABSENT: 1 (Gomez)

**SCHEDULE OF MEETINGS**

**Motion:** to approve Council Calendar/Schedule of Meetings for February 2014

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of:	AYES: 4
	NOES: 0
	ABSENT: 1 (Gomez)

Councilmember Gomez returned to the dais at 7:13 PM.

**PRESENTATIONS**

Mayor Esteves honored:

- The Nelson family for their outdoor holiday decorations at Christmas time. The Mayor presented Mrs. Nelson with a certificate of recognition.
- Proclaimed *Black History Month* for the month of February 2014, and the proclamation was accepted by Ms. Demetress Morris.

**PUBLIC FORUM**

**Robert Chung**, of Milpitas Community Education Endowment, proposed a new event on July 4<sup>th</sup>, "A Taste of Milpitas" offering a variety of restaurant food, to be held in parking lot of Cal Hills High School, prior to the City's fireworks celebration. It would be a fundraiser for the MCEE. He sought permits and licenses as needed, and would like to work in partnership with the City.

Mayor Esteves responded to Mr. Chung that this topic could be added to a future agenda for discussion by the Council.

Councilmember Giordano asked about another event date in 2014, the International BBQ by the Chamber of Commerce. Chamber President Liz Ainsworth replied: May 31 and June 1, 2014.

**Robert Marini**, Milpitas resident, noticed the new statue and it had nothing to do with Milpitas (re: the Minuteman). He referred to sewer rates and calculations.

**Rob Means**, Milpitas resident, spoke to the Council about political issues and an effort in Silicon Valley by "Move to Amend" group in response to the Supreme Court decision on corporations. He provided a form to the five Councilmembers for a petition effort.

## **ANNOUNCEMENTS**

Vice Mayor Polanski thanked all the staff who put together the 60<sup>th</sup> anniversary celebration events, both the Gala on Saturday evening, January 25 and the busy Family Day on Sunday afternoon, January 26, 2014.

Councilmember Giordano thanked Vice Mayor Polanski and Councilmember Montano for serving on a subcommittee to get the 60<sup>th</sup> anniversary events started, and complimented them for garnering more than enough contributions from corporate sponsors.

Councilmember Montano recently attended the 100<sup>th</sup> anniversary of the County Libraries (now the Joint Powers Authority) and Milpitas is one of the highest used libraries. More hours were needed at the Milpitas Library after previous hours were cut, so it was something to consider at budget time. She thanked all for making the 60<sup>th</sup> anniversary a great event.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

## **APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

## **CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Councilmember Giordano requested to place item no. 5 (FY Status Report) on consent.

Councilmember Montano requested to remove item no. 6 (Mid-Year Budget appropriations).

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5  
NOES: 0

### **\* 2. Odor Control Report**

Received the odor report covering a recent two-month period November 15, 2013 through January 16, 2014.

### **\* 3. Commission**

Re-appointed Estrella Gilana to the Senior Advisory Commission as a regular member to a two-year term expiring in December 2015.

### **\* 4. Library Essay Contest**

Per request of the Milpitas Library Advisory Commission, approved the allocation of \$3,600 to the Milpitas Public Library for the third annual essay contest and approved the related budget change form.

- \* 5. Financial Status FY 12-13      Received the financial status report for the six months ended December 31, 2013.
- \* 7. Investment Portfolio Status      Received the investment portfolio status report for the quarter ended December 31, 2013.
- \* 8. Adopt Ordinance No. 26.4      Waived the second reading and adopted Ordinance No. 26.4, updating the City expenditure ratification process in accordance with state law.
- \* 9. Resolution for Agreement with North Cal Hauling      Adopted Resolution No. 8342 to approve a Non-Exclusive Collection, Transportation, and Recycling of Debris Agreement with Orlando De La Cruz doing business as North Cal Hauling for a three year term and authorized the City Manager (or designee) to extend the agreement a maximum of two, three-year extensions.
- \*10. Amendment No. 4 to Agreement with Law Firm      Approved Amendment No. 4 to the agreement with Jarvis, Fay, Doporto & Gibson for attorney services, increasing the agreement by \$80,000, for attorney services relative to Newby Island Landfill litigation.

## **PUBLIC HEARING**

- 1. Actions for the Pacific Mall & Hotel development project      Senior Planner Sheldon AhSing provided a description and overview of the plan to develop McCarthy Ranch Marketplace on the western side with a new Pacific Mall and Hotel by developer team TMS McCarthy Inc. from Toronto, Ontario, Canada. Several planning changes were requested for approval by City Council at this meeting, as recommended by the Planning Commission. He described the parking plan, with the large number of spaces to be provided, including a large portion of underground parking. The unique character of the project on a major parcel for renovation of an outdated shopping center held great appeal.

Councilmember Giordano asked about the cultural center part of the proposal. Staff described two live entertainment areas within the mall to host, for example, events at Chinese New Year.

Councilmember Gomez commented that the square footage of the store units was very small versus a usual mall. He wondered how this would impact what was for sale. Staff responded there was plenty of room for cell phone stores, small boutiques, and local artisans with unique items for sale.

Councilmember Montano wanted to know about the new space compared to the Great Mall in Milpitas. Staff replied that the Great Mall was much larger. The new proposed mall would be approximately one third the size of the Great Mall.

Mayor Esteves inquired about traffic mitigation for the increased traffic at Pacific Mall. Staff reviewed the traffic flow design, additional parking, and the interface with state route 237, all of which would add capacity.

Next, Mayor Esteves invited the project applicant to the podium.

Philip Duchon, spoke as the representative owner of TMS McCarthy Inc. from Toronto, describing two specific aspects of this proposed new development for Milpitas. Pacific Mall would be different than any conventional mall with no anchor store and not solely one owner. Small condominiums would be owned by the small business owners inside the mall structure containing entrepreneurial ventures. The timing was fortuitous for this presentation, since it was the start of Chinese New Year this week.

Next, Ernie Yamane, the project's architect and Vice President of Marketing, described the 150,000 square feet of space, providing more details of the unique mall design.

Councilmember Giordano asked about signs inside the mall. Would the business owners go through any approval for their signs inside, she asked. Mr. Yamane responded that the

CC&Rs for the condominium owners would dictate signs in English as well as other languages, requiring some consistency.

Vice Mayor Polanski reported that she had met with Mr. Yamane and other mall representatives about the project. One concern was traffic and the flow getting in and out from the new mall, so she asked for more explanation of the flow of traffic. Mr. Yamane again reviewed traffic flow, and noted that the garage footings would be a couple feet above the water table with the underground parking structure designed accordingly.

Councilmember Montano wanted to learn how far the Coyote Creek was from the project site. She asked about precautions taken for any water seepage or flooding. Mr. Yamane responded that water proofing of the basement was included and had some discussion of the structure's modern foundation. Ms. Montano commented on Fremont's Pacific Commons, where electric car plug-ins were available, and this concept was also planned at Pacific Mall here in Milpitas, reported Mr. Yamane.

Vice Mayor Polanski asked what would be the hours of operation. Mall representatives replied those were not yet set but may be open at 10 or 11 in a.m. until approximately 9 PM, seven days per week.

Councilmember Gomez asked what was the draw for residents to go to the mall when there was no anchor store. Mr. Duchon said it was the variety of small stores and the type of items for sale, unlike any other shopping mall. Mr. Gomez further inquired about the signs for the mall and hotel, and what the sign plan would include.

Mayor Esteves asked several questions about competition for this mall, what type kind of entertainment would be offered, and specific cultural events. He asked about the name of the mall, and wanted to include "Milpitas" on the sign. The Mayor also strongly recommended including some art pieces for enjoyment by visitors to Pacific Mall.

Councilmember Montano asked if there were plans for a Milpitas Police office or station at this mall. Pacific Mall staff reported there would be a security station, not a police office. City staff noted that a security plan was necessary for police to review. Ms. Montano talked about foot traffic and the need for a "beeping" crossing for safety.

Councilmember Montano displayed a specific design she favored for traffic to flow, in order to alleviate traffic, which would allow or require an entrance/exit between Dollar Tree and Walmart onto McCarthy Blvd. Traffic was the biggest issue.

City Traffic Engineer Steve Chan responded to Ms. Montano in order to allow this to work, it required alignment between two private properties. No agreement existed for that to happen and was not currently feasible, until a new plan would revise the Walmart parking lot. It might be considered in future phases of development on that site.

Councilmember Gomez wanted to know how many jobs were predicted at the mall. With 400-500 stores, each with one owner and perhaps other employees, an estimated total of new jobs was 400 – 1,000.

At 8:36 PM, Mayor Esteves opened the public hearing, calling speakers to the podium.

**Robert Marini**, Milpitas resident, remarked on the hotel site and any planned capturing of water runoff. He asked if solar cells would be on top of the hotel to conserve energy.

**Liz Ainsworth**, resident and Chamber of Commerce president, noted the traffic would be the largest issue, getting onto 237 at McCarthy, and onto I-880. She agreed with the Mayor about including Milpitas in the name of the Mall. Units within the mall looked to be open on top, but she asked what about the food court sections? She asked when the hotel would be built. Attracting traffic to restaurants at the time of Superbowl nearby at the new stadium was important. She had concern for security issues, too.

**Rob Means**, 1421 Yellowstone resident, was curious about regular shuttles from the new BART station and whether that would be done by the mall or did they expect that VTA would provide for shoppers. What about energy efficiency measures, LED lighting, global warming, on electric car charging stations, and bicycles parking spaces, including electric bikes. He was excited about individual ownership of the spaces for small retailers.

**Phil Nin**, San Jose resident, complimented the project, and had lots of friends in Milpitas he liked to meet for coffee and would be able to meet here. The mall would bring lots of customers, business owners, and he wanted to bring friends to this new mall.

**Mike**, manager of two parcels across the street at McCarthy Ranch, was concerned for Phase 2 of the project with an increased traffic flow. He sought a signalized intersection by Banana Leaf in phase 2 of construction. It was risky to do a shopping mall without an anchor store. He encouraged City Council to visit the mall in Toronto, Canada.

**John**, Etna Way resident, supported the idea for this mall, and he could open his own business. The new concept could bring tourists to spend money here in Milpitas.

A **San Jose resident** felt Milpitas was the most patriotic city in the world, and could do more if he had this City Council in San Jose. He had helped Carmen Montano on her campaign. This project would do a lot for the city. He wondered if tenants could afford their spaces, and referred to neighboring malls in San Jose.

A **Fremont woman** was very happy about the project coming to Milpitas. It would be great, and she would love to be a business owner at Pacific Mall, which would make an integrated community in this city.

**Sean Tran**, Silo Avenue, was very excited about this project coming to Milpitas, as it was a great restaurant destination adding a new shopping experience for residents and visitors.

**Steve Barren**, resident at corner of Zanker and Tasman, highlighted two points: 1) the impact on economy and revenue for City; and 2) what could be provided for community, a multi-cultural city already. The new mall would unite the community further and put Milpitas as a pioneer for a new shopping concept.

A **man** said it was a good location in Milpitas at this site, but right now business was going down at McCarthy Ranch. If built, he would bring visitors from outside Milpitas and the U.S. Peak hours would be on the weekends, not weekdays, he noted.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5  
NOES: 0

Mayor Esteves gave the applicant a chance to respond to comments by speakers.

Mr. Yamane addressed numerous points and questions identified by the speakers during the public hearing.

Councilmember Giordano inquired if the condominium owner was like residential ownership, and the reply was yes, in terms of maintenance fees for the common areas of the mall.

Vice Mayor Polanski was very excited about the project, and the architecture. She liked the marketing and condo concept, and fully supported the project.

Councilmember Montano believed the Pacific Mall would revitalize the area. The architecture she termed “fantastic” and was happy that McCarthy Ranch was preserved still. Traffic was her only item of concern, and to alleviate it was the key to success. Adding employees in Milpitas was great, too

Mayor Esteves commented that traffic would be increased, after office hours and on the weekend primarily. He recommended art pieces to make the mall attractive. This mall would be a compliment to existing businesses. He wanted to add a condition to make sure the CC&Rs were approved by the City. He wanted to add a condition that it was an option of the Police Chief to put a police substation in the mall, if needed.

Councilmember Gomez said this was economic development. He was okay with the title on signs if it brought jobs and tax dollars to Milpitas. It was new tax dollars, not now collected, with people coming from all over the region to spend money at the mall. This operation was different than Great Mall, so crime would be less with good security. He thanked the developer for investing in the community.

Motion: approve the following three actions by resolution:

- (2) to adopt Resolution No. 8339 approving General Plan Amendment No. GP13-0001 to create a Citywide Freeway Corridor Overlay
- (3) to adopt Resolution No. 8340 certifying the Final Environmental Impact Report for the Pacific Mall and Hotel Project in accordance with the California Environmental Quality Act of 1970, as amended and state and local guidelines implementing CEQA
- (4) to adopt Resolution No. 8341 approving General Plan Amendment No. GP13-0001, Site Development Permit No. SD13-0001, Conditional Use Permit No. UP13-0001, Tentative Map No. MT13-0001, and Variance No. VA13-0001, subject to conditions of approval for Pacific Mall and Hotel development at 11-111 Ranch Drive

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

In response to the Mayor’s request for additional Conditions of Approval, it was noted that the proposed Conditions, Covenants & Restrictions (CC&Rs) for the condominium units in the Pacific Mall were already part of the project’s Conditions of Approval as was the approved security plan.

Motion carried by a vote of: AYES: 5  
NOES: 0

Next, City Attorney Mike Ogaz read aloud the title “An Ordinance of the City Council Amending Chapter 10 of Title XI of the Milpitas Municipal Code Relating to Establishment of a Citywide Freeway Corridor Overlay and Zoning map Amendment for the Pacific Mall and Hotel Project.”

- (5) Motion: to waive the first reading beyond the title of Ordinance No. 38.812

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

- (6) Motion: to introduce Ordinance No. 38.812 amending the Zoning Code to create implementing guidelines for the Citywide Freeway Corridor Overlay and amending the zoning map for the Pacific Mall and Hotel project

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

## NEW BUSINESS

### 6. FY 2013-14 Mid-Year Budget Appropriations

Councilmember Montano asked about No. 1 and No. 3 on the list of appropriations. She wanted to know if there was a technology fund in the City. Finance Director Emma Karlen replied no. There was a Permit Automation Fund collected from permit fees, and then it could fund technology improvements, as needed. There was no technology replacement fund for other items (such as No. 3 below). Councilmember Montano recommended the City establish a technology fund in the future.

Motion: approve the Fiscal Year 2013-14 mid-year budget appropriations as itemized below (and noted on the budget change form):

- 1) Increase the budget appropriation for Information Services by \$15,000 to purchase new equipment for two departments.
- 2) Increase the budget appropriation for the City Attorney by \$230,000 to pay the costs of outside counsel handling litigation and various lawsuits.
- 3) Increase the budget appropriation for Recreation Services by \$4,500 to pay for purchase of new computers to support Active Network recreation registration software system.
- 4) Increase the budget appropriation for Planning & Neighborhood Services by \$30,000. \$10,000 is for personnel services to administer abandoned vehicles program, and \$20,000 is for consultant services to prepare CEQA and other environmental reviews.

Motion/Second: Councilmember Montano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

## ADJOURNMENT

Mayor Esteves adjourned the meeting at 9:20 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*